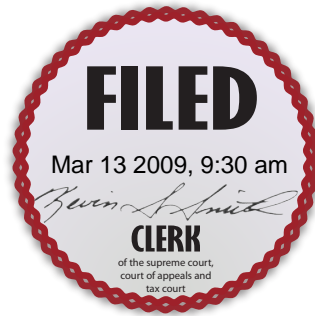


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

STEPHANIE NAJJAR,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A04-0808-CR-486
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 7
The Honorable William J. Nelson, Judge
Cause No. 49F07-0804-CM-80524

March 13, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Stephanie Najjar (Najjar), appeals her conviction for resisting law enforcement, a Class A misdemeanor, Ind. Code § 35-44-3-3.

We affirm and remand with instructions.

ISSUE

Najjar raises one issue for our review, which we restate as: Whether the State presented sufficient evidence to prove beyond a reasonable doubt that Najjar committed resisting law enforcement.

FACTS AND PROCEDURAL HISTORY

On April 13, 2008, Officer Michael Leeper (Officer Leeper) of the Indianapolis Metropolitan Police Department was patrolling his assigned area in Indianapolis, Indiana. During his patrol, Officer Leeper noticed Najjar and Gary Davis (Davis) standing behind a Village Pantry store. Officer Leeper observed Najjar and Davis exchange what Officer Leeper believed to be a check. Given that the area had a significant problem with prostitution and narcotics usage, Officer Leeper proceeded to conduct an investigatory stop in order to further inquire about the transaction he had just witnessed.

After approaching Najjar and Davis, Officer Leeper asked Davis if he had any weapons. Davis said that he did not. Officer Leeper conducted a pat down search of Davis to confirm that he had no weapons in his possession. Officer Leeper then asked Najjar and Davis for identification. Both complied with Officer Leeper's request. When Officer Leeper asked what the two were doing behind the store, they told him that they were exchanging

telephone numbers. Officer Leeper dispatched for a second officer to respond to the scene to facilitate the investigatory stop. Since Officer Leeper had yet to pat down Najjar for weapons, he requested that Najjar and Davis stand at the front of his police car as a precautionary measure while he waited for backup to arrive. At that time, Najjar became “irate and demanded to know why she was being stopped.” (Transcript p. 7). Officer Leeper explained to Najjar his suspicions regarding the exchange he had witnessed between Davis and her moments earlier.

When Officer Leeper proceeded to run a warrant check, Najjar “began to circle around to the back [of him.]” (Tr. p. 7). Officer Leeper directed Najjar to return to the front of the car so that he could keep both Najjar and Davis within his line of sight. When Najjar refused, Officer Leeper pulled out his handcuffs and ordered Najjar to put her hands behind her back. When Najjar refused to follow Officer Leeper’s directions, he grabbed her right hand to put her into handcuffs. Najjar “immediately jerked away” and said, “Don’t you touch me.” (Tr. p. 8). Officer Leeper again tried to force Najjar’s hands behind her back, but she “pulled away.” (Tr. p. 8). Officer Leeper then used a defensive “arm bar” technique¹ to force her to the ground and held her there until backup arrived at the scene. (Tr. p. 8).

¹ According to Officer Leeper’s testimony, an arm bar technique is a defense tactic taught to officers during their police academy training. Officer Leeper explained:

There are two (2) types of arm bars. There is a straight arm bar take down and a bent arm bar take down. The straight arm bar take down, which is what I applied to [Najjar], is a technique where [Najjar’s] arm was locked in a straight position. The elbow is locked and you apply force to the tricep and sweep the arm to the ground using the momentum of the person’s body to take them to the ground and placing them in a position to be placed in handcuffs.

(Tr. p. 9).

Shortly thereafter, Officer Laura Smith (Officer Smith) of the Indianapolis Metropolitan Police Department arrived at the scene in response to Officer Leeper's request for backup. When Officer Smith arrived, she observed Officer Leeper holding Najjar on the ground using the arm bar technique. Officer Smith conducted a pat down search of Najjar, which yielded no weapons or drugs.

On April 14, 2008, the State filed an Information charging Najjar with Count I, resisting law enforcement by fleeing, a Class A misdemeanor, I.C. § 35-44-3-3, and Count II, resisting law enforcement by force, a Class A misdemeanor, I.C. § 35-44-3-3. On July 22, 2008, the trial court conducted a bench trial. At the trial, the State presented Officer Leeper and Officer Smith as witnesses. At the conclusion of the State's evidence, the trial court dismissed Count I, resisting law enforcement by fleeing. The trial court found Najjar guilty of Count II, resisting law enforcement by force, and sentenced her to 365 days in jail with four days credit and 361 days suspended.

Najjar now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Najjar argues that the State did not present sufficient evidence to sustain her conviction for resisting law enforcement, a Class A misdemeanor, beyond a reasonable doubt. Our standard of review with regard to sufficiency claims is well settled:

In reviewing a sufficiency of the evidence claim, this court does not reweigh the evidence or judge the credibility of the witnesses. We will consider only the evidence most favorable to the verdict and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. . . . Reversal

is appropriate only when reasonable persons would not be able to form inferences as to each material element of the offense.

Perez v. State, 872 N.E.2d 208, 212-13 (Ind. Ct. App. 2007), *trans. denied* (citations omitted).

Indiana Code section 35-44-3-3 provides in pertinent part: “(a) A person who knowingly or intentionally: (1) forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer’s duties . . . commits resisting law enforcement, a Class A misdemeanor[.]” Thus, to convict Najjar of resisting law enforcement as a Class A misdemeanor, the State needed to prove beyond a reasonable doubt that she knowingly or intentionally acted forcibly to resist, obstruct, or interfere with Officer Leeper while he was lawfully engaged in his official duties as a police officer.

Najjar argues that the State provided no evidence to show that she acted forcibly during her encounter with Officer Leeper. We disagree. Our supreme court has recognized that in resisting law enforcement cases, force is used when an individual “directs strength, power or violence towards police officers[.]” *Price v. State*, 622 N.E.2d 954, 963 n.14 (Ind. 1993) (citing *Spangler v. State*, 607 N.E.2d 720 (Ind. 1993)), *reh’g denied*. Likewise, we have held that the “forcibly” element is satisfied where there is evidence that the defendant “pulled” and “jerked” in response to a police officer’s attempt to restrain the defendant in the course of his official duties. *J.S. v. State*, 843 N.E.2d 1013, 1017 (Ind. Ct. App. 2006) (holding that evidence was sufficient to support juvenile’s adjudication as delinquent based

on resisting law enforcement when juvenile “flailed his arms, pulled, jerked, and yanked away from [o]fficer”).

In the present case, the State presented evidence that when Officer Leeper tried to handcuff Najjar, “she immediately jerked away.” (Tr. p. 8). Likewise, Officer Leeper testified that Najjar repeatedly resisted his attempts to handcuff her by pulling away. Furthermore, in order to combat Najjar’s resistance, Officer Leeper had to use a defensive arm bar technique to force her to the ground and hold her there until Officer Smith arrived at the scene. This evidence regarding Najjar’s actions was sufficient to satisfy the “forcibly” element of Indiana Code section 35-44-3-3. Therefore, the evidence is sufficient to support Najjar’s conviction.

Finally, we believe it is worth noting that there are three significant flaws in the brief submitted by Najjar’s attorney. First, he has not included a standard of review. Indiana Appellate Rule 46(A)(8)(b) explicitly requires a “concise statement of the applicable statement of review” for each issue. Second, he fails to use proper punctuation, proper citation format, and, where appropriate, pinpoint citations. We direct counsel to Indiana Appellate Rule 22 for information on proper citation form. Third and finally, in his argument section, counsel discusses only the evidence that supports his contentions and none of the evidence that supports Najjar’s conviction. Perhaps if counsel had started with a standard of review he would have known that this is improper. *See Perez*, 872 N.E.2d at 213 (“We will consider *only* the evidence most favorable to the verdict and the reasonable inferences drawn therefrom[.]”) (emphasis added).

This is not the first time that we have been compelled to admonish counsel's firm in this regard. *See Mosley v. State*, No. 49A02-0802-CR-188 (Ind. Ct. App. Sept. 19, 2008), *trans. granted*. As such, we conclude that counsel is not entitled to a fee for his appellate services in this case, and we remand this case to the trial court with instructions to order counsel to return to the Marion County Public Defender Office any fee that he may have already received. *See Galvan v. State*, 877 N.E.2d 213, 216-17 (Ind. Ct. App. 2007). Furthermore, we caution counsel that future violations such as this may result in additional consequences, such as referral to the Supreme Court Disciplinary Commission for investigation, as Indiana Professional Conduct Rule 1.1 requires attorneys to represent their clients competently. *See id.* at 217.

CONCLUSION

Based on the foregoing, we conclude that the evidence is sufficient to support Najjar's conviction for resisting law enforcement, a Class A misdemeanor, beyond a reasonable doubt. Furthermore, we remand this case to the trial court with instructions to order counsel to return to the Marion County Public Defender Office any fee that he may have already received.

Affirmed and remanded with instructions.

DARDEN, J., and VAIDIK, J., concur.